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STATE SENATOR

Senate Bill 284 Testimony
Senate Committee on Environment and Natural Resources
Tuesday, December 18, 2007
10:10 AM
300 Southeast

Chairman Miller and Committee Members,

Thank you for the opportunity to provide testimony today on Senate Bill 284, which brings educational and enforcement change to Wisconsin's laws regarding the burning of solid waste.

For the past 29 years, it has been illegal to burn solid waste such as insulation, plastics, tar paper, used oils and other wastes that we send to our area landfills. Unfortunately, as many of us have seen firsthand, some individuals skip the landfill and create mini incinerators in their backyards, creating health and safety problems for their neighbors and communities. While some people are unaware that there are laws regulating open burning, others think that garbage collection is too expensive or inconvenient or that it is better for the environment that products are burned rather than put in a landfill.

What these people don't realize is that open burning jeopardizes both the environment and people's health. Open burning is the leading cause of wildfires, generates a significant amount of air pollution in our state, and is also the largest source of dioxins.

Dioxin, which is a toxic compound, originates from the burning of trash, wood and other substances, particularly during low temperature burning. This compound can cause health problems in humans when it settles on our feed crops, where it can then be consumed and stored in the fat of livestock animals and eventually ingested by humans through red meat and milk consumption.

Dioxin is also problematic for humans due to the fact that it can be inhaled through the air that we breathe. Amongst other health risks for humans, dioxin can be a carcinogen, affect breathing, produce developmental abnormalities in the enamel of children's teeth, induce central and peripheral nervous system pathology, cause thyroid disorders, damage the immune system, and lead to diabetes.

According to a 1994 study by the United States Environmental Protection Agency, each pound of garbage burned in a burn barrel emits twice as many furans (which are harmful organic

compounds), 20 times more dioxin and 40 times more particulates than if that same pound of garbage were burned in an incinerator with air pollution controls.

Due to the hazardous effects, a number of communities across the state have already adopted ordinances banning open burning. However, there is no uniform standard, and patchwork ordinances often lead to confusion and ineffective enforcement. In addition, enforcement of ordinance violations rests with local sheriff's departments, which are often unable to dedicate their limited resources to policing open burning. Further, in communities that lack open burning ordinances, the only mechanism for enforcement is through court action by the Department of Justice, which, as we all know, has limited resources that are generally used to prosecute the most appalling violations.

Our constituents and industries lose when our open burning laws are not enforced. This bill aims to alleviate this problem by allowing the Department of Natural Resources to also have citation authority over open burning violations.

As I mentioned earlier though, we realize that many citizens are not aware that open burning is illegal or of its harmful effects on humans and livestock. With that idea in mind, the bill does not allow the DNR to issue any fines for the first year after the bill becomes law. After the first year, all first time violators will receive a maximum penalty of \$5. Subsequent violators would be subject to a maximum penalty of \$500. We expect that as people learn about the risks involved and as they become aware that it is illegal, fewer people will burn solid waste.

While working with the DNR on developing this legislation, it was brought to our attention that another important aspect of this issue is the ability to enforce regulations at solid waste facilities that store waste tires. As many of you may recall from 2005, a massive tire fire in Shields, Wisconsin may have been averted if a citation process had been in place for tire storage. Prior to the fire, DNR inspections found that not only did the facility not maintain adequate fire lanes, it also had an estimated 6,500 tons of tire material stored at the facility—over three times its approved amount. Unfortunately, due to the limited resources of current enforcement agencies, the company was not compelled to comply with the laws and it resulted in a fire that burned for six days. This bill authorizes the DNR to issue citations to those who operate tire storage facilities, thereby again allowing the department that actually investigates complaints to also enforce them. Fines can range from \$10 to no more than \$5,000 for each violation, with each day of continued violation considered a separate offense.

It is extremely important that we begin to adequately enforce the laws that were passed to protect our environment and the health of our citizens. Let me emphasize that that this bill does not change our existing open burning restrictions, but solely how we can properly enforce them. While remaining mindful that in many parts of the state, burning has been the waste disposal method of choice for many years, this legislation finally provides the means to have effective enforcement of this hazardous practice.

Thank you for your time and consideration of this issue. I'll be happy to try to answer any questions you may have.



WISCONSIN STATE REPRESENTATIVE
Louis J. Molepske, Jr.
71ST ASSEMBLY DISTRICT

Senate Bill 284
The Open Burning Education and Enforcement Act

I. Background:

- A. It is currently illegal to burn solid waste such as insulation, plastics, tar paper, used oils and other wastes that we send to our area landfills. Although Wisconsin has a long history of open burning, land fills remain the safest option for the disposal of waste.
- B. Open burning is the leading cause of air pollution and wildfires in Wisconsin.
- i. A 1994 study by the United States Environmental Protection Agency showed that each pound of garbage burned in a burn barrel emits twice as many furans (a harmful organic compound), twenty times more dioxin and forty times more particulates than if that same pound of garbage were burned in an incinerator with air pollution controls.
 - ii. The increase of plastics in our waste stream has made open burning even more harmful to humans.
 - iii. In Minnesota, it was estimated that 35% of all wildfires were started by open burning.
- C. Open burning is also the largest source of dioxins in Wisconsin (accounting for roughly 19% of all dioxins released into the atmosphere).
- i. Dioxin, a toxic compound, originates from the burning of trash, wood and other substances.
 - ii. The compound can cause health problems in humans when it settles on our feed crops, where it can then be consumed and stored in the fat of livestock animals and eventually ingested by humans through red meat and milk consumption.
 - iii. Dioxin is also problematic for humans due to the fact that it can be inhaled through the air that we breathe. Amongst other health risks for humans, dioxin can be a carcinogen; can affect breathing; can cause developmental abnormalities in the enamel of children's teeth; can cause central and peripheral nervous system pathology; can cause thyroid disorders; can cause damage to the immune system; and can lead to diabetes.

- D. Open burning is the number one source of citizen complaints to the Department of Natural Resources on air pollution matters.

II. Current Law-Wisconsin Statutes Section 285.11

- A. Under Wisconsin Statute § 285.11, the Department of Natural Resources was given the authority to promulgate rules pertaining to air pollution.
- i. NR 429 (see attached): Defines "open burning" as "oxidation from which the products of combustion are emitted directly into the ambient air without passing through a stack or chimney."
 - a. NR 429 prohibits open burning (with twelve exceptions).
 - ii. NR 502.11 (see attached): Establishes open burning requirements for wood-burning facilities.
- B. In addition, a number of communities across the state have adopted ordinances banning open burning. However, these ordinances have no uniform standard, and patchwork ordinances often lead to confusion and ineffective enforcement.
- C. Enforcement of ordinance violations rests with local sheriff's departments, which are often unable to dedicate their limited resources to policing open burning.
- D. In communities that lack open burning ordinances, the only mechanism for enforcement is through court action by the Department of Justice, which only has the resources to prosecute the most egregious violations.

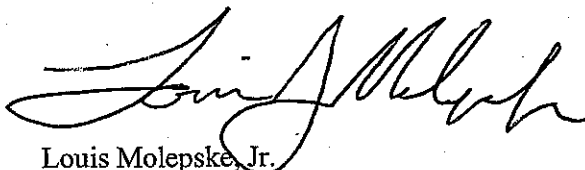
III. Senate Bill 284

- A. This bill authorizes the Department of Natural Resources and local law enforcement officials to **issue citations** for violations of laws or ordinances regarding the burning of solid waste. *In other words, the bill changes how we ENFORCE previously existing state law regarding open burning, not the laws themselves.* Local sheriffs and town chairpersons would retain their ability to enforce open burning laws.
- i. Under current law, the Department of Natural Resources already issues citations, similar to traffic tickets, for violations of certain laws, including, those regulating hunting, fishing and littering.
- B. As open burning is so common in Wisconsin, we understand that many citizens are not aware it is illegal, or of its harmful effects on humans and livestock. With that idea in mind, under the bill, the DNR will not issue any fines for the first year after the bill becomes law. After the first year, all first time violators will receive a maximum penalty of \$5. Subsequent violations would be subject to a maximum forfeiture of \$500.
- C. The bill also includes a provision which authorizes the DNR to issue a citation to a person who operates a solid waste facility at which waste tires are stored. In

2005, a massive tire fire in Shields, Wisconsin could have been averted if a citation process had been in place for tire storage.

- i. Pursuant to Wis. Stat., § 289.96(3)(a), a violation of this section carries with it a minimum fine of \$10 and a maximum fine of \$5,000 for each violation. Each day of continued violation is considered a separate offense.
 - a. The Watertown Recycling Plant was licensed to hold 200,000 tires, but at the time of the fire there were over 1,000,000 tires on hand.
- D. It is vital that we take the common sense measures necessary to maintain the pristine quality of our air and protect Wisconsin's vibrant ecosystem for future generations. Wisconsinites need to know about this law and the law needs to have an effective enforcement mechanism. We believe that this bill meets that need head on, yet at the same time is not overly harsh to inadvertent or first time offenders.
- E. This bill is supported by the American Lung Association of Wisconsin; the Wisconsin League of Conservation Voters; the League of Women's Voters of Wisconsin; the National Solid Wastes Management Association; Veolia ES Solid Waste, Inc.; and Waste Management, Inc.
- F. As you may know, this bill was passed by its assigned committees in both the Assembly (AB-878) and the Senate (SB-470) last session. Unfortunately, due to time constraints, neither bill made it before the full legislative body for a vote.

Respectfully submitted,



Louis Molepske, Jr.
State Representative
71st Assembly District

environmental protection agency that the county is to be included in the volatile organic compound accommodation area.

History: 1971 c. 125, 130, 211; 1977 c. 377; 1979 c. 34, 221; 1987 a. 27, 399; 1989 a. 31; 1991 a. 269, 302; 1995 a. 227 ss. 438 to 453, 989; Stats. 1995 s. 285.01; 1997 a. 35; 1999 a. 9; 2003 a. 25.

The social and economic roots of judge-made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

Cleaning the Air: Wisconsin's Air Quality Laws. Burke. Wis. Law. Aug. 1992.

SUBCHAPTER II

GENERAL POWERS AND DUTIES

285.11 Air pollution control; department duties. The department shall:

(1) Promulgate rules implementing and consistent with this chapter and s. 299.15.

(2) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter and s. 299.15.

(3) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a regional basis, and provide technical and consultative assistance for that purpose.

(4) Collect and disseminate information and conduct educational and training programs relating to the purposes of this chapter and s. 299.15.

(5) Organize a comprehensive and integrated program to enhance the quality, management and protection of the state's air resources.

(6) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of the plans. The rules or control strategies submitted to the federal environmental protection agency under the federal clean air act for control of atmospheric ozone shall conform with the federal clean air act unless, based on the recommendation of the natural resources board or the head of the department, as defined in s. 15.01 (8), of any other department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control strategy, the governor determines that measures beyond those required by the federal clean air act meet any of the following criteria:

(a) The measures are part of an interstate ozone control strategy implementation agreement under s. 285.15 signed by the governor of this state and of the state of Illinois.

(b) The measures are necessary in order to comply with the percentage reductions specified in 42 USC 7511a (b) (1) (A) or (c) (2) (B).

Cross Reference: See also chs. NR 428 and 432, Wis. adm. code.

(7) Conduct or direct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control and, by means of field studies and sampling, determine the degree of air contamination and air pollution throughout the state.

(8) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall relieve any person from compliance with this chapter or rules pursuant thereto, or any other provision of law.

(9) Prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air, consistent with s. 285.27 (2) (b).

(10) Specify the best available control technology on an individual case-by-case basis considering energy, economic and environmental impacts and other costs related to the source.

(11) Coordinate the reporting requirements under ss. 285.65 and 299.15 in order to minimize duplicative reporting requirements.

(12) Prepare an annual report which states the total nitrogen oxide and sulfur dioxide emissions from all stationary sources in this state. This report may be combined with other reports published by the department.

(13) If federal legislation is enacted that establishes sulfur dioxide or nitrogen oxide controls for the purpose of reducing acid deposition, prepare a report, in consultation with the public service commission, this state's electric utilities, industries and environmental groups, recommending ways to coordinate state law with federal law. The department, after holding a public hearing on the report, shall submit the report to the governor and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), within 6 months after the enactment of the federal legislation.

(14) Promulgate by rule the actions or events which constitute the reconstruction of a major source.

(15) Promulgate by rule the actions or events which constitute the shutdown of a facility.

(16) Promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source and that may limit the classification of a major source to specified categories of stationary sources and to specific air contaminants.

(17) Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term "modification" as it relates to specified categories of stationary sources, to specific air contaminants and to amounts of emissions or increases in emissions.

(18) Adopt and apply objective performance measurements, for the subunit of the department that administers this chapter, relating to the issuance of permits under subch. VII and to overall performance of the subunit.

History: 1995 a. 227 ss. 455, 989; 1999 a. 9; 2003 a. 118.

Cross Reference: See also NR 400-, Wis. adm. code.

285.13 Air pollution control; department powers. The department may:

(1) Hold hearings relating to any aspect of the administration of this chapter and s. 299.15 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(2) Issue orders to effectuate the purposes of this chapter and s. 299.15 and enforce the same by all appropriate administrative and judicial proceedings.

(3) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(4) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto.

(5) Advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

(6) Examine any records relating to emissions which cause or contribute to air contamination.

(7) Establish by rule, consistent with the federal clean air act, the amount of offsetting emissions reductions required under s. 285.63 (2) (a).

History: 1995 a. 227 ss. 456, 989.

Cross Reference: See also NR 400-, Wis. adm. code.

285.14 State implementation plans. (1) **CONTENT.** The department may not submit a control measure or strategy that imposes or may result in regulatory requirements to the federal environmental protection agency for inclusion in a state implementation plan under 42 USC 7410 unless the department has promulgated the control measure or strategy as a rule.

(2) **REVIEW BY STANDING COMMITTEES.** At least 60 days before the department is required to submit a state implementation plan

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Chapter NR 429

MALODOROUS EMISSIONS AND OPEN BURNING

NR 429.01 Applicability; purpose.
NR 429.02 Definitions.

NR 429.03 Malodorous emissions.
NR 429.04 Open burning.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1996, No. 492.

NR 429.01 Applicability; purpose. (1) APPLICABILITY. This chapter applies to all air contaminant sources and to their owners and operators.

(2) PURPOSE. This chapter is adopted under ss. 285.11, 285.13 and 285.17, Stats., to establish emission limitations, odor tests and abatement or control requirements for malodorous air contaminant sources and to limit the conditions under which open burning is permitted in order to protect air quality.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; am. (1), Register, May, 1992, No. 437, eff. 6-1-92.

NR 429.02 Definitions. The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

(1) "Open burning" means oxidation from which the products of combustion are emitted directly into the ambient air without passing through a stack or chimney. Open burning does not include the combustion occurring at a properly operated air curtain destructor.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; renum. (2) to be NR 400.02 (98m) and am., Register, May, 1992, No. 437, eff. 6-1-92; am. (intro.), (1), Register, December, 1995, No. 480, eff. 1-1-96.

NR 429.03 Malodorous emissions. (1) GENERAL LIMITATIONS. No person may cause, allow or permit emission into the ambient air of any substance or combination of substances in such quantities that an objectionable odor is determined to result unless preventive measures satisfactory to the department are taken to abate or control such emission.

(2) OBJECTIONABLE ODOR TESTS. An odor shall be deemed objectionable when either or both of the following tests are met:

(a) Upon decision resulting from investigation by the department, based upon the nature, intensity, frequency and duration of the odor as well as the type of area involved and other pertinent factors.

(b) Or when 60% of a random sample of persons exposed to the odor in their place of residence or employment, other than employment at the odor source, claim it to be objectionable and the nature, intensity, frequency and duration of the odor are considered.

(3) ABATEMENT OR CONTROL REQUIREMENTS. Abatement or control requirements may include but are not limited to:

(a) Use of catalytic incinerators, after burners, scrubbers, adsorbers, absorbers or other methods approved by the department.

(b) The removal and disposal of odorous materials.

(c) The use of methods in handling and storage of odorous materials that minimize emissions.

(d) The following of prescribed standards in the maintenance of premises to reduce odorous emissions.

(e) Use of best available control technology to reduce odorous emissions.

History: Renum. from NR 154.18 (1), Register, September, 1986, No. 369, eff. 10-1-86; am. (1), Register, May, 1992, No. 437, eff. 6-1-92.

NR 429.04 Open burning. (1) PROHIBITION AND EXCEPTIONS. Open burning is prohibited with the following exceptions:

(a) Burning of brush or weeds on agricultural lands.

(b) Fires set for practice and instruction of fire fighters, or testing of fire fighting equipment.

(c) Backfires to control forest fires or fires set for forest or wildlife habitat management with approval of the department where no reasonable alternative is available.

(d) Burning of explosive or dangerous material for which there is no other safe means of disposal.

(e) Burning of small amounts of dry combustible rubbish (not to include wet combustible rubbish, garbage, oily substances, asphalt, plastic or rubber products) except where prohibited by local ordinance.

(f) Burning at rural or isolated solid waste disposal sites outside of the Southeastern Wisconsin Intrastate AQCR which have been approved under s. NR 506.04, or burning of special waste where permits are obtained from the department.

(g) Outdoor fires for cooking, ceremonies or recreation.

(h) Burning of trees, limbs, stumps, brush or weeds for clearing or maintenance of rights-of-ways outside of the Southeastern Wisconsin Intrastate AQCR.

(i) Burning of trees, wood, brush or demolition materials, excluding asphaltic or rubber material, using methods approved by the department.

(j) Small open flames for welding, acetylene torches, safety flares, heating tar or similar applications.

(k) Burning of gaseous or liquid waste in a manner approved by the department.

(L) Burning of small amounts of dry leaves and dry plant clippings except where prohibited by local ordinance.

(2) OPEN BURNING PROCEDURES. All allowed open burning shall be conducted in a safe pollution free manner, when wind and weather conditions are such as to minimize adverse effects and in conformance with local and state fire protection regulations.

History: Renum. from NR 154.10, Register, September, 1986, No. 369, eff. 10-1-86; corrections in (1) (f) and (h) made under s. 13.93 (2m) (b) 6. and 7, Stats., Register, July, 1988, No. 391; am. (1) (b), (f) and (j), Register, May, 1992, No. 437, eff. 6-1-92; am. (1) (f), Register, October, 1999, No. 526, eff. 11-1-99.

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conformance with all local burning regulations and permits, state air management rules, with any approved plan of operation and the following minimum requirements:

(a) The burning pit shall be constructed of a material which will result in a pit of permanent dimensions. Unconsolidated soils are not an acceptable material for construction of the burning pit. Maintenance shall be performed on the pit to keep its dimensions constant to keep the air curtain destructor operating properly.

(b) The burning pit floor shall be constructed in a manner which provides for proper drainage.

(c) The burning pit shall be oriented perpendicular to the prevailing wind with the plenum chamber and blower on the downwind side.

(d) The charging area shall be paved with the concrete pad for a distance of at least 10 feet from the edge of the burning pit and sloped away from the chamber. Adequate safety devices shall be provided to prevent loading equipment from falling into the burning pit.

(e) Only clean wood and brush may be burned in an air curtain destructor. Brush shall be burned only in conformance with s. 287.07, Stats.

(f) The stockpile of waste material shall be kept a minimum of 100 feet from the burner. The total amount of stockpiled waste shall be limited to the amount that can be burned in 5 days.

(g) Charging shall be done to prevent damage to the pit wall and floor.

(h) Waste shall be placed so that it does not extend above the burning pit or interfere with air circulation.

(i) Start-up shall be accomplished by using wood kindling material to ignite larger materials. Where sufficient quantities of wood kindling materials are unobtainable, other methods approved by the department in writing may be used.

(j) Burning may be conducted only during daylight hours. Quantities of materials to be burned shall be restricted to allow for complete burnout while the facility is attended.

(k) Fire-fighting equipment shall be kept at the facility in case of emergency. Arrangements shall also be made with the local government to provide fire protection. Fire breaks shall be provided for a distance of at least 100 feet from the air curtain destructor. Greater setbacks may be specified by the department.

(l) The burning pit shall be cleaned out on a regular schedule. Ashes may not be allowed to accumulate to a depth of greater than 3 feet. The department may specify a lesser depth.

(m) The air curtain destructor shall be surrounded by a fence with a lockable gate. The gate shall be kept locked when no attendant is on duty.

(n) An attendant shall be on duty at all times when the blower unit is in operation. All fires shall be extinguished when the blower unit is shut off.

(o) Warning signs shall be posted at intervals around the entire air curtain destructor installation notifying people to keep out of the area.

(p) A sign acceptable to the department shall be posted at the entrance to the operation which indicates the name, acceptable wastes, license number, the hours of operation, penalty for non-authorized use, necessary safety precautions and any other pertinent information.

(q) Surface water shall be diverted away from the active operating area, storage area and access areas.

(r) Ash resulting from the operation shall be disposed of at a facility approved by the department to receive such material.

(s) The facility shall be operated in a nuisance-free manner consistent with this chapter and in accordance with the state air management rules in chs. NR 400 to 499.

Note: Air curtain destructor facilities must obtain a burning permit during certain times of the year under s. 26.12, Stats., or may be required to obtain a burning permit from the township in which the burning will occur.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; r. and rec. (1), (2), (3), am. (4) (intro.), (a), (e), (f), (h), (i), r. (4) (m), (n), (5), r. (4) (m), (n), (5), m. (4) (o) to (u) to be (4) (m) to (s) and am. (4) (n), (p), (s), Register, June, 1996, No. 486, eff. 7-1-96; CR 05-020; am. (2) (a) 6., Register January 2006 No. 601, eff. 2-1-06.

NR 502.11 Woodburning facilities and open burning. (1) GENERAL. (a) Unless exempt under sub. (2), owners and operators of woodburning facilities shall comply with the general requirements in s. NR 502.04, comply with the design and operational requirements in sub. (5), and obtain a plan of operation approval as specified in sub. (4) and an operating license from the department.

(b) Unless exempt under sub. (2), owners and operators of new or expanded woodburning facilities shall demonstrate compliance with the locational criteria in sub. (3).

(2) EXEMPTIONS. The following woodburning facilities are exempt from licensing and all requirements of this section, although a burning permit from the department may still be required during certain times of the year in counties within a forest fire control area. These exempt facilities may not burn wet combustible rubbish, garbage, oily substances, asphalt, plastic or rubber products, unless these substances are exempt under s. NR 429.04.

(a) Burning of trees, limbs, stumps, brush or weeds, except for yard waste, as a result of agricultural or silvicultural activities, if the burning is conducted on the property where the waste is generated.

(b) Burning of trees, limbs, stumps, brush or weeds, except for yard waste, as a result of clearing or maintenance of highway, railroad or utility rights-of-way and other land clearing operations, if the burning is conducted on the property where the waste is generated.

(c) Burning existing structures for practice and instruction of fire fighters or testing of fire fighting equipment. If the burning includes a building, a demolition notification shall be submitted to the air management program of the department. Asphalt shingles and asphalt and plastic siding shall be removed from structures unless they are considered necessary to the fire practice. All material containing asbestos shall be removed in compliance with ch. NR 447. Ash from the burned structure shall be disposed of, when cool, in a landfill approved by the department. The department may approve alternate ash disposal sites if groundwater and surface water quality will not be affected.

(d) Burning of yard waste and small quantities of dry combustible household rubbish, including paper, cardboard and clean untreated wood from a single family or household, on property where it is generated, unless prohibited by local ordinance.

(e) In emergency situations such as natural disasters, brush and other yard waste can be disposed in a landfill or burned without energy recovery, with approval from the department.

(f) One time burning of dry, unpainted and untreated wood, stumps, trees and brush in conformance with s. 287.07, Stats. Department staff shall be notified prior to the burn to obtain concurrence that the burn is in accordance with this provision and that the amount of this wood to be burned on a one time basis and the rate of burning comply with state air management rules in chs. NR 400 to 499.

Note: Woodburning facility license requirements do not apply to backfires set by fire control personnel to aid in controlling forest fires or fires set for forest, wildlife habitat or grassland management purposes.

(3) LOCATIONAL CRITERIA. (a) Except as otherwise specified in this chapter, new or expanded woodburning facilities may not be located in any of the following areas, unless an exemption is granted under par. (b):

1. Within a floodplain.

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2. Within 250 feet of any private water supply well, or within 1,200 feet of any public water supply well.

3. Within 250 feet of any navigable lake, pond or flowage.

4. Within 250 feet of any navigable river or stream.

5. Within 100 feet of land owned by a person other than the owner or operator of the facility, unless the facility is screened by natural objects, plantings, fences or other appropriate means so that it is not visible from the property boundary.

6. Within 1,000 feet of the nearest edge of the right-of-way of any state trunk highway, interstate or federal aid primary highway or the boundary of any public park or state natural area under ss. 23.27 (1) and 23.28 (1), Stats., unless the facility is screened by natural objects, plantings, fences or other appropriate means so that it is not visible from the highway, park or state natural area.

7. Within 10,000 feet of any airport runway used or planned to be used by turbojet aircraft or within 5,000 feet of any airport runway used only by piston type aircraft or within other areas where a substantial hazard to aircraft would be created.

8. Within 1/4 mile of any residence unless a written consent is obtained from all adult residents within 1/4 mile of the burning pad.

9. Within the limits of fill of an existing or abandoned landfill.

(b) The department may grant exemptions to par. (a) 2. to 7. only upon demonstration by the applicant of circumstances which warrant the exemptions. Exemptions from compliance with par. (a) 1., 8. and 9., may not be granted.

(4) **PLAN OF OPERATION.** No person may establish or construct a woodburning facility or expand an existing woodburning facility prior to obtaining approval in writing from the department of a plan of operation for the facility. Unless otherwise approved by the department in writing, the plan of operation shall include a design which complies with the design and operational requirements in sub. (5) and contains at a minimum the following:

(a) Name, address and telephone number of facility operator.

(b) A description of the types, quantity and sources of material proposed to be burned, and anticipated frequency of burning.

(c) Written consent from all adult residents and business owners within 1/4 mile of the burning pad, except that consent is not required from any person who was not an adult resident or proprietor at the time the facility was initially licensed by the department, unless that person is a successor in interest to a person who was an adult resident or proprietor at the time. If a resident or proprietor who previously consented to operation of the facility withdraws the consent in writing, the withdrawal is not effective until the end of the current license period for the facility.

(5) **DESIGN AND OPERATIONAL REQUIREMENTS.** No person may construct, operate or maintain a woodburning facility except in conformance with all local burning regulations and permits, state air management rules in chs. NR 400 to 499, any approved plan of operation and the following minimum requirements:

(a) All burning shall be done on a burning pad or pit constructed of concrete, compacted gravel, compacted mineral soil or other materials approved in writing by the department. A fire-break of mineral soil scraped free of vegetation for a minimum distance of 100 feet around the burning pad or pit shall be constructed. Greater setback distances may be required by the department.

(b) Only dry, unpainted and untreated wood, stumps or trees may be burned at a woodburning facility. Brush shall be burned only in conformance with s. 287.07, Stats.

(c) Waste material may be placed or stored on the burning pad, but may not exceed the amount of wood that can be burned in one day in conformance with ch. NR 445. Any additional accumulation of waste material shall be stockpiled a minimum of 100 feet from the burning pad. The total amount of stockpiled waste shall be limited to the amount that can be burned in 5 calendar days.

(d) Start-up shall be accomplished by using wood kindling material to ignite larger materials. Where sufficient quantities of wood kindling materials are unobtainable, other methods approved by the department in writing may be used.

(e) Burning shall be conducted only during daylight hours.

(f) Fire-fighting equipment shall be kept at the facility in case of emergency, unless the services of a local fire protection agency are arranged.

(g) The burning pad shall be surrounded by a fence with a lockable gate. The gate shall be kept locked when no attendant is on duty.

(h) An attendant shall be on duty at all times when burning is taking place. All fires shall be extinguished before the attendant leaves the facility. The fire shall be actively tended and maintained to promote complete combustion, ensure good fuel-flame contact and burndown.

(j) A sign acceptable to the department shall be posted at the entrance to the operation which indicates the facility name, acceptable wastes, license number, the hours of operation, penalty for unauthorized use, necessary safety precautions and any other pertinent information.

(k) Storm water shall be diverted away from the burning pad, storage area and access areas.

(L) Ash resulting from the operation shall be disposed of at a facility approved by the department to receive that material.

(m) The facility shall be operated in a nuisance-free manner.

Note: Woodburning facilities must obtain a burning permit during certain times of the year under s. 26.12, Stats., or may be required to obtain a burning permit from the township in which the burning will occur.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; r. and recr., Register, June, 1996, No. 486, eff. 7-1-96; CR 05-020: am. (3) (a) 6. Register January 2006 No. 601, eff. 2-1-06.

NR 502.12 Yard, farm and vegetable food waste composting facilities. (1) GENERAL. No person may operate or maintain a solid waste composting facility for yard waste, clean chipped wood, farm crop residue, farm animal manure, animal carcasses or vegetable food waste, except in accordance with the following requirements:

(a) Unless exempt under sub. (2), comply with the performance standards in s. NR 502.04 (1) and operate the facility in a nuisance-free and environmentally sound manner.

(b) Unless exempt under sub. (2), (3) or (4), comply with the closure requirements in s. NR 502.04 (3) (a) and (b), and the minimum operational and design standards in subs. (10) and (11).

(c) Unless exempt under sub. (2), (3), (4) or (5), obtain an operating license from the department.

(d) Unless exempt under sub. (2), (3), (4) or (5), owners and operators of new or expanded facilities regulated under this section shall comply with the initial site inspection requirements in s. NR 502.04 (2) and demonstrate compliance with the locational criteria in sub. (8).

(e) Unless exempt under sub. (2), (3), (4), (5), (6) or (7), comply with all of the following:

1. The requirements in s. NR 502.04 (3) (c), (4), (5) and (6).

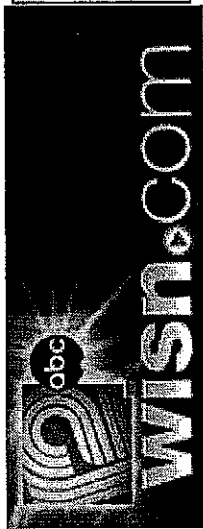
2. The additional operational and design standards in sub. (12).

3. Obtain a plan of operation approval and a construction documentation approval as specified in subs. (13) and (14).

4. The monitoring and reporting requirements specified in sub. (15).

(f) Unless exempt under sub. (2), (3), (4), (5), (6) or (7), owners and operators of new or expanded facilities regulated under this section shall comply with the initial site inspection requirements in s. NR 502.04 (2) and demonstrate compliance with the locational criteria in sub. (9).

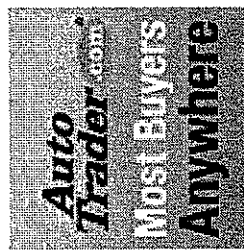
Note: Facilities for composting waste types other than yard waste, clean chipped wood, farm crop residue, farm animal manure, animal carcasses or vegetable food



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Crews Continue Fighting Massive Tire Fire Near Watertown

Recycling Plant Had Too Many Tires, Officials Said

POSTED: 11:11 am CDT July 19, 2005
 UPDATED: 1:49 pm CDT July 20, 2005




SHIELDS, Wis. -- Rain is helping fire crews as they continue to dump water on a massive tire fire in Dodge County at Watertown Tire Recyclers.

Showers are moving through southern Wisconsin today, breaking a long dry stretch. However, showers will be widely scattered. ([Current Conditions/Forecast](#))

After the fire broke out at about 10 a.m. Tuesday, smoke rose more than 4,200 feet in the air and could be seen from both Madison and Milwaukee.

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One-third of a building on the ground burned away and collapsed. No Watertown Tire Fire

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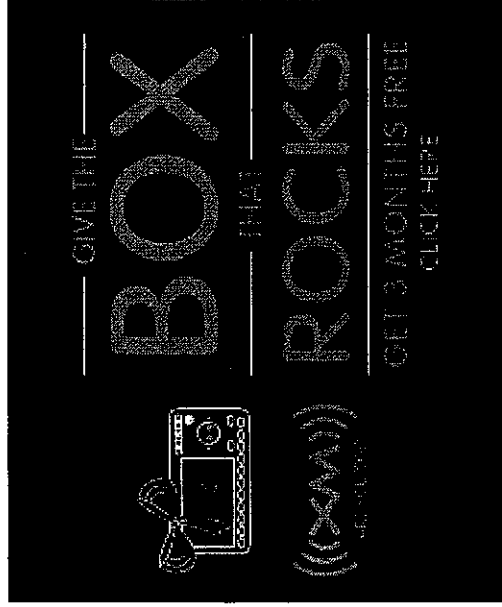
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injuries were reported, but flames leapt as high as 80 to 100 feet into the air. The fire could burn for several days, firefighters said, and the building at Rich and



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Provini Road is Tire Plant Out Of Compliance

expected to be a total loss.

Tom Springer, owner of Watertown tire recycling plant, was licensed to hold 200,000 tires, but there were more than 1 million at the site, reported WISC-TV in Madison. The operation has been out of compliance with the DNR and a target of local environmental groups.

Barb Palocek, a DNR solid and hazardous waste specialist, was sitting down with the owner in his office -- which is now gone -- just Tuesday morning.

"I was in the office, making a compliance check when someone ran in and yelled, 'Fire!' We called 911, and it was mayhem," Palocek said.

Now, the DNR must determine what impact the fire will have on the environment.

Since the plant is in a rural area, there are no fire hydrants. Fourteen departments and 120 firefighters implemented a high-tech fire line, running water from

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Watertown a mile and a half out into the country.

Tire fires are difficult to fight. A Virginia tire fire took months to put down in 1983. In 1999, it took 30 days for a tire fire to burn out in Modesto, Calif.

As the fire continues to burn, members of a local citizen environmental group are saying this was an accident waiting to happen. The Citizens for Safe Environment group had already taken some action against Watertown

Tire Recycling.

The group has been watching the number of tires pile up for months and had been trying to get Springer to scale back operations and get in compliance.

"As this pile increased, you went from 200,000 to 1 million tires, we realized the fire department can't handle this," said Mark Lisitza, who lives less than 1 mile from the plant.

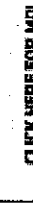


Health Officials Advise Residents To Stay Inside


Health officials said the huge plume of smoke is composed of particulate matter that poses an inhalation risk to some people.

The smoke is headed southeast, toward the city of Watertown. Other counties have been notified all the way to Waukesha County.

Health officials are advising people to stay inside as much as possible and keep their windows closed.

All outdoor activities in Watertown were canceled Tuesday night, and although there have been





Credit Report

no reports of people seeking medical attention, they're telling people to be careful.

"If individuals have respiratory illness or chronic illness, they should stay inside," said Carol Quest with the city of Watertown Health Department.

Officials are also using some air and ground water monitors to check the safety of the area.

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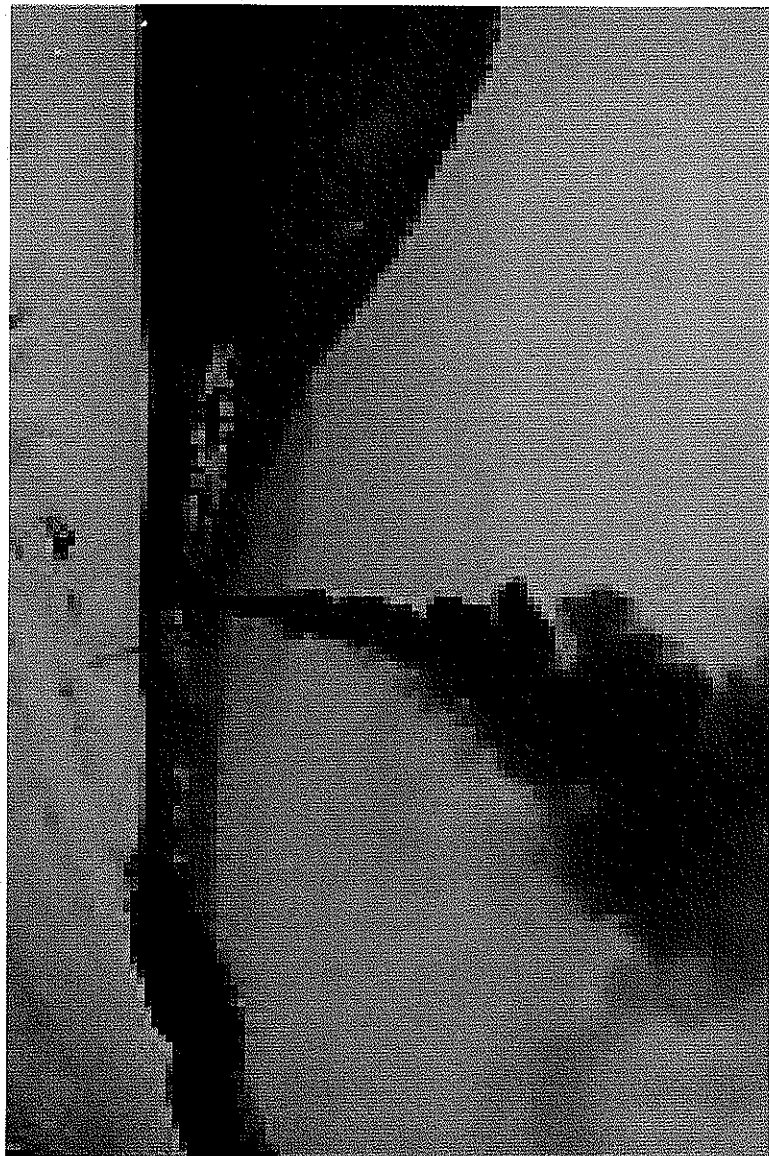
Before the Senate Committee on Environment and Natural Resources

**SB 284
December 18, 2007**

Testimony Outline

**Kevin Kessler, Acting Director
Bureau of Air Management, DNR**

- I. **Illegal open burning is a very significant problem in Wisconsin.**
 - Number one cause of citizen complaints on air pollution
 - Number one source of dioxin emissions in Wisconsin
 - Number one source of wildfires
 - Significant source of particulate matter
- II. **This bill doesn't change whatsoever what illegal to burn and what's legal to burn nor does it change waste tire requirements.**
 - Those rule provisions have been on the books for 25 years.
 - This bill only provides a streamlined enforcement mechanism for long-standing law.
 - We can presently issue a fire prevention citation for someone burning without a permit or burning at the wrong time of day, for example. However, if the same person has a permit and decides to burn tires or asphalt shingles, we can't issue a citation.
- III. **This bill was the result of substantial stakeholder involvement and it follows the recommendations of the statewide associations that were involved.**
 - Emphasize education
 - Delayed effective date
 - Minimal forfeiture for 1st offenders
 - If entrusted with this authority, DNR will be very careful to use the authority in accordance with legislative intent and to not abuse the authority in any manner.
- IV. **Citation authority is only one tool in the toolbox to deal with illegal open burning and waste tires.**
 - Education
 - Local ordinances and local programs
 - Referral to Dept. of Justice
- V. **One minor technical amendment will be requested regarding forest ranger authority**

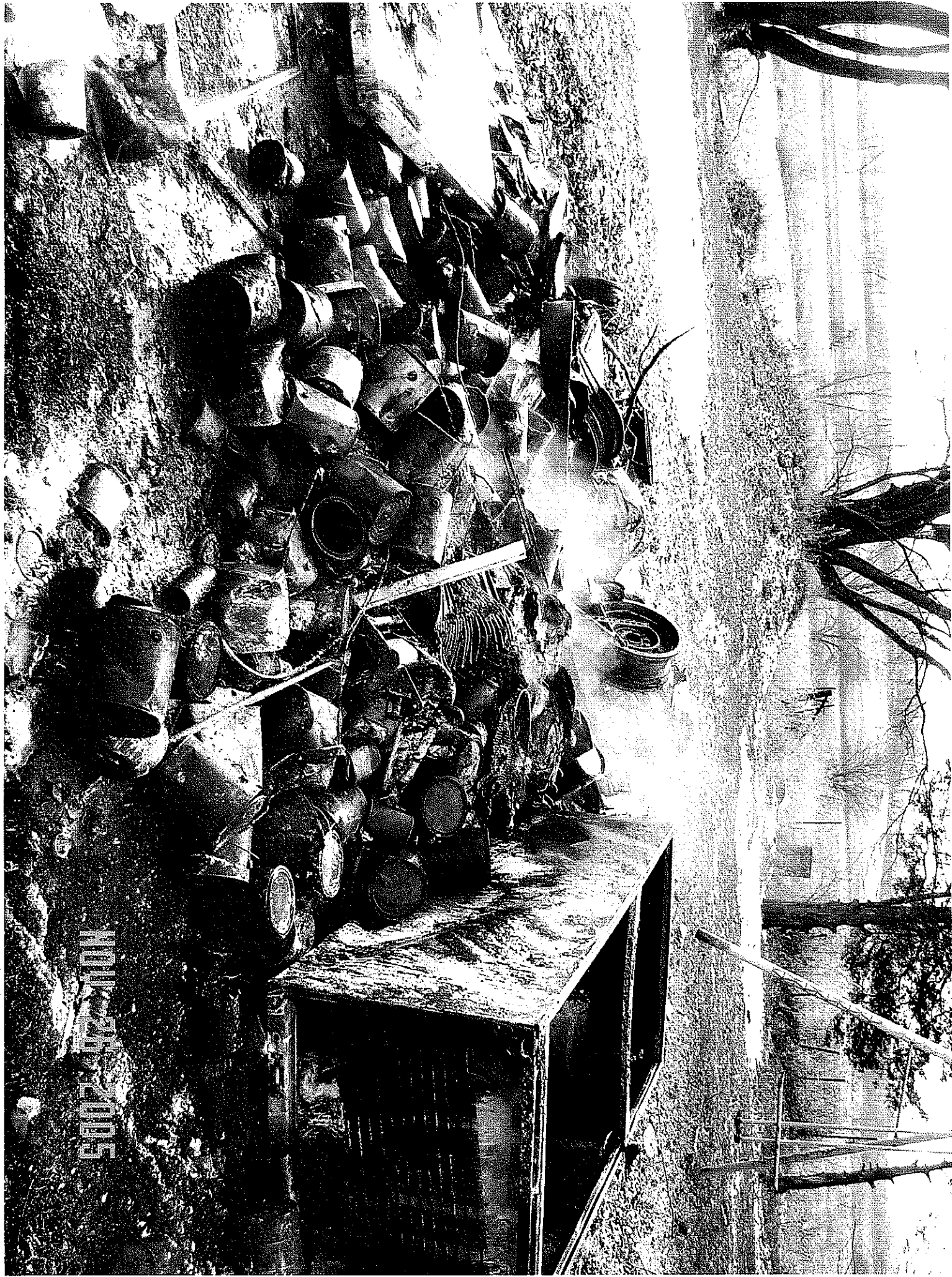






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December 17, 2007

To: Senate Committee on Environment and Natural Resources
From: American Lung Association of Wisconsin

Good morning:

My name is Randy Radtke and I am representing the American Lung Association of Wisconsin and those people with lung disease who we serve. Thank you for hearing my testimony this morning.

The Lung Association is concerned with the DNR's lack of authority to enforce a law on illegal open burning. Open burning is a significant contributor to lung disease and a serious trigger for asthma attacks. Every year, particularly in spring and fall, our organization fields calls and inquiries from people all over the state who are experiencing breathing problems due to open burning nearby. They report that the smoke burns their eyes, causes them to cough and wheeze, and even limits their ability to be outside. Many of these people are elderly whose respiratory capacity has reduced with age; others are asthmatics, victims of COPD or chronic bronchitis, or healthy adults who enjoy exercising and/or working in their yards.

We recognized that many of these complaints concern legal burning – leaves, wood, etc. and that is bad enough for people with lung disease, but illegal burning is much worse.

State law prohibits burning garbage, plastic, rubber, asphalt and treated wood which are especially toxic when burned because they contain chemicals and other unhealthy additives. If the DNR does not have the authority to issue a citation for violations, the law is meaningless and offers no protection whatsoever. The existing enforcement mechanism is cumbersome, expensive and difficult, especially for small cases. More often than not, violations are not pursued, which sends the message to the offender that the law is meaningless.

Additionally, open burning increases air pollution, particularly particle pollution, one of the pollutants most closely monitored by the EPA. Increased levels of particle pollution subject Wisconsin to a host of stringent federal air quality regulations that can make the state inhospitable to business. Those federal standards recently were made even more restrictive; we must do everything in our power – on all fronts – to make it easy for businesses to locate in Wisconsin.

It is a very simple thing to change statutes to allow the DNR – the logical agency – to issue citations and put some real “teeth” into the

law. It would make a world of difference to a person with lung disease who, even under ideal conditions, can't take breathing for granted.

Thank you for your time and attention. The American Lung Association of Wisconsin urges you to support SB 284.



LEAGUE OF WOMEN VOTERS® OF WISCONSIN EDUCATION FUND

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<http://www.lwwwi.org>
lwwwisconsin@lwwwi.org

December 18, 2007

To: Senate Environment and Natural Resources Committee

Re: **Support SB 284**, Citations to Enforce against Open Burning of Solid Waste and Illegal Storage or Disposal of Waste Tires

The League of Women Voters of Wisconsin has a long history of supporting policies and programs designed to protect air quality in the State. Consistent with that history, we urge you to support SB 284 giving the DNR the authority to issue citations for illegal open burning as well as illegal storage or disposal of waste tires.

Open burning presents a number of serious health hazards to Wisconsin citizens. According to the 2003 Report of the Stakeholder Steering Group on Open Burning and Backyard Dumping, open burning is the number one uncontrolled source of dioxin emissions, the number one cause of wildfires, and the number one source of citizen complaints to the DNR on air pollution matters. Studies by both the EPA and Environment Canada have consistently identified residential burning of household garbage as a significant anthropogenic source of dioxins.

Although humans do not ingest dioxin directly by breathing smoke from a neighbor's burn barrel, dioxin emissions from burn barrels land on feed crops and are concentrated in the bodies of farm animals. The majority of dioxin intake to humans thus comes from food sources, especially animal fats and dairy products. Because burn barrels are used predominantly in rural and agricultural areas, the danger is obvious. Other air pollutants associated with burn barrels, such as volatile organics, fine particulate matters, and polyaromatic hydrocarbons, and heavy metals, are ingested directly by humans who inhale the smoke from burning garbage.

SB 284 provides an enforcement mechanism which is not an oppressive. There is a one year delay in the effective date to allow for extensive publicity and education. First offenses at a private residence are subject to only a \$5 fine.

There is no technological fix for the problems associated with open burning, such as burn barrel design. The only solution is for people to stop burning garbage. The fact that open burning continues to be a serious problem, despite a 25-year history of being illegal, points to the need for better enforcement. SB 284 provides that.

SB 284 also provides the DNR with an additional tool to deal with illegal storage or disposal of waste tires. The July 2005 waste tire fire in Watertown highlighted a gap in existing statutory authority to deal with problematic waste tire storage. SB 284 provides citation authority for these instances.

We urge the Committee to adopt SB 284 and recommend it for passage in the full Senate. Thank you for the opportunity to share the views of the League of Women Voters of Wisconsin.



Wisconsin Environmental Health Association, Incorporated



December 17, 2007

Kevin Kessler
Air Management Bureau Director
Dept. of Natural Resources

Dear Mr. Kessler:

The Wisconsin Environmental Health Association recognizes the dangers associated with open burning of waste. This letter is in support of AB 546 and SB 284. The bills amend the current statutes regarding open burning by allowing the Department of Natural Resources and local law enforcement officials to issue citations to those individuals or businesses in violation of existing state law. Currently there is little anyone can do when these laws are being violated.

WEHA's membership consists of many local health department sanitarians and environmental health specialists working to protect the public's health and environment. These efforts are often frustrated by numerous open burning complaints that cannot be resolved. We have worked at the local level to address some of these concerns, but more help is needed. We believe the bills will give law enforcement the necessary tools to protect health and environment.

Wisconsin Environmental Health Association urges you to seize this opportunity. As partners, we will support your legislation in any way possible. If there is anything more we can do, please let us know.

Sincerely,

A handwritten signature in cursive script, reading 'Christopher A. Hinz'.

Christopher A. Hinz, R.S.
President, Wisconsin Environmental Health Association